

AMENDED IN ASSEMBLY JULY 16, 2003

AMENDED IN ASSEMBLY JUNE 30, 2003

AMENDED IN SENATE APRIL 28, 2003

AMENDED IN SENATE APRIL 8, 2003

**SENATE BILL**

**No. 686**

**Introduced by Senator Ortiz**

February 21, 2003

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An act to amend Section 674.6 of, to add Section 674.8 to, and to add Chapter 5 (commencing with Section 11890) to Part 3 of Division 2 of, the Insurance Code, relating to long-term care facilities.

LEGISLATIVE COUNSEL'S DIGEST

SB 686, as amended, Ortiz. Long-term care facilities: insurance.

Existing law provides for the licensure and regulation of health facilities, including long-term health care facilities, by the State Department of Health Services.

Existing law provides for the licensing and regulation of residential care facilities for the elderly by the State Department of Social Services.

Existing law requires an insurer to notify the Department of Insurance at least 60 days prior to the date it intends to withdraw wholly or substantially from a line of commercial liability insurance.

This bill would require an insurer issuing policies of liability insurance to long-term health care facilities, residential care facilities for the elderly, or physicians who provide or oversee the provision of medical services to residents in long-term health care facilities or residential care facilities for the elderly, to notify the ~~department~~ *Department of Insurance* at least 90 days prior to the date it intends to

cease, withdraw, or substantially withdraw from offering liability policies to those facilities.

The bill would require each insurer authorized to write liability insurance for long-term health care facilities, residential care facilities for the elderly, or physicians who provide or oversee the provision of medical services to residents in long-term health care facilities or residential care facilities for the elderly, by a date set by the ~~commissioner~~ *Insurance Commissioner*, but in any event no later than July 1 of each calendar year, to report to the ~~commissioner~~ *Insurance Commissioner* specified information regarding policies for those facilities. This bill would establish priorities for the department and the ~~commissioner~~ *Insurance Commissioner* concerning the collection ~~and compiling~~ of information reported by the insurers.

*This bill would also make the above information collected by the department subject to specified disclosure protections.*

Existing law generally regulates the insurance industry.

This bill would allow the Insurance Commissioner to authorize the formation of a market assistance program, as specified, to assist in securing liability insurance for long-term health care facilities, residential care facilities for the elderly, or physicians who provide or oversee the provision of medical services to residents in long-term health care facilities or residential care facilities for the elderly if the ~~commissioner~~ *Insurance Commissioner* finds, after a public hearing, that the liability insurance is not readily available in the voluntary insurance market and that the public interest requires its availability.

The bill would also allow the ~~commissioner~~ *Insurance Commissioner* to order the creation of an unincorporated, not-for-profit, temporary joint underwriting association for liability insurance, for the purpose of providing, for a specified period, a market for liability insurance on a self-supporting basis, without subsidy from association members.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: no.

*The people of the State of California do enact as follows:*

1 SECTION 1. Section 674.6 of the Insurance Code is amended  
2 to read:



1 674.6. (a) No insurer issuing policies of insurance subject to  
2 Section 674.5 or 675 shall cease to offer any particular line of  
3 coverage without prior notification to the commissioner.

4 (b) Except as provided in Section 674.8, an insurer shall notify  
5 the department at least 60 days prior to the date it intends to  
6 withdraw wholly or substantially from a line of (1) commercial  
7 liability insurance, (2) any insurance defined in Section 660 or 675  
8 when coverage is provided by a separate rider or endorsement for  
9 an activity for which the insured receives compensation, a stipend,  
10 or remuneration of any kind for the activity and then only to the  
11 extent of the coverage, (3) any other insurance defined in Section  
12 660, or (4) any insurance issued to an individual or individuals  
13 covering a risk not arising from a business or commercial activity.  
14 Upon receipt of the notice, the commissioner may request and  
15 review additional information, as deemed necessary, and  
16 investigate the market conditions to determine whether that  
17 insurance may become not readily available in the voluntary  
18 insurance market as a result of the withdrawal.

19 (c) For purposes of this section, “intent to substantially  
20 withdraw” means an insurer’s intent to nonrenew in excess of 50  
21 percent of its current policyholders in the line of coverage upon  
22 their next renewal.

23 (d) The commissioner shall adopt appropriate rules,  
24 regulations, and standards for purposes of implementing this  
25 section.

26 (e) Any insurer that has notified the commissioner pursuant to  
27 subdivision (b) shall (1) notify the commissioner within 10 days  
28 after the date given in the withdrawal notice if the insurer does not  
29 in fact withdraw that line of insurance from the market, or (2)  
30 notify the commissioner within 10 days after reentry if the insurer  
31 reenters that line after the withdrawal.

32 SEC. 2. Section 674.8 is added to the Insurance Code, to read:

33 674.8. (a) Notwithstanding subdivision (b) of Section 674.6,  
34 an insurer issuing policies of liability insurance to long-term  
35 health care facilities, residential care facilities for the elderly, or  
36 physicians who provide or oversee the provision of services to  
37 residents in long-term health care facilities or residential care  
38 facilities for the elderly shall notify the department at least 90 days  
39 prior to the date it intends to cease, withdraw, or substantially

1 withdraw from offering liability policies to those facilities or  
2 physicians.

3 (b) Each insurer authorized to write liability insurance for  
4 long-term health care facilities, residential care facilities for the  
5 elderly, or physicians who provide or oversee the provision of  
6 services to residents in long-term health care facilities or  
7 residential care facilities for the elderly shall, by a date to be set by  
8 the commissioner, but in any event no later than July 1 of each  
9 calendar year, report to the commissioner information specified by  
10 him or her regarding liability policies for those facilities or  
11 physicians. The information shall include, but not be limited to, the  
12 following:

13 (1) Whether the insurer is writing coverage for long-term  
14 health care facilities, residential care facilities for the elderly, or  
15 physicians who provide or oversee the provision of services to  
16 residents in long-term health care facilities or residential care  
17 facilities for the elderly, including new and renewal policies, and  
18 the types of policies it is writing.

19 (2) The number of long-term health care facilities or residential  
20 care facilities for the elderly and beds covered.

21 (3) The total amount of premiums from insureds, both received  
22 and earned, during the immediately preceding calendar year.

23 (4) The total number of claims received, including the amount  
24 per claim.

25 (5) The number of claims outstanding, together with the  
26 monetary amount reserved for loss and allocated loss expense for  
27 the immediately preceding calendar year.

28 (6) The number of claims closed with payment during the  
29 immediately preceding calendar year, the total monetary amount  
30 paid thereon, reported by the year the claim occurred, and the total  
31 allocated loss expense paid thereon, reported by the year the claim  
32 occurred.

33 (7) The monetary amount paid on claims, including the amount  
34 paid per claim, during the immediately preceding calendar year to  
35 be reported separately by the year the claim occurred, with  
36 allocated loss expense paid.

37 (8) The number of claims closed without payment during the  
38 immediately preceding calendar year, by the year the claim  
39 occurred, and the allocated loss expense paid thereon.

1 (9) The monetary amount reserved in the annual statement for  
2 the immediately preceding calendar year for claims incurred but  
3 not reported to the insurer.

4 (10) The number of lawsuits filed against the insureds in the  
5 immediately preceding calendar year.

6 (11) Annualized information on investment income or loss,  
7 which shall be consistent with the reported information provided  
8 by insurers to the National Association of Insurance  
9 Commissioners.

10 (c) For the purposes of information collection conducted  
11 pursuant to this section, first priority shall be given by the  
12 department and commissioner to collecting and compiling  
13 information from insurers concerning long-term health care  
14 facilities and physicians providing services in those facilities, and,  
15 to the extent that departmental resources allow, secondary priority  
16 shall then be given to the collecting and compiling of information  
17 concerning residential care facilities for the elderly and the  
18 physicians who provide services in those facilities.

19 (d) Information that is collected for long-term health care  
20 facilities and the physicians for those facilities shall be collected,  
21 maintained, analyzed, and reported separately from information  
22 that is collected, maintained, analyzed, and reported concerning  
23 residential care facilities for the elderly, and the physicians for  
24 those facilities.

25 (e) As used in this section, “long-term health care facility” has  
26 the same meaning as that term is defined in Section 1418 of the  
27 Health and Safety Code.

28 (f) As used in this section, “residential care facilities for the  
29 elderly” has the same meaning as that term is defined in Section  
30 1569.2 of the Health and Safety Code.

31 (g) *Information collected by the department pursuant to this*  
32 *section shall be deemed official information and subject to the*  
33 *disclosure protections of Section 1040 of the Evidence Code.*  
34 *Nothing in this section shall require individualized information*  
35 *that would identify the amount paid by a specific insurer or facility*  
36 *to be released. However, nothing in this subdivision shall prevent*  
37 *the department from preparing reports and policy*  
38 *recommendations based on the data collected pursuant to this*  
39 *section.*

1 SEC. 3. Chapter 5 (commencing with Section 11890) is added  
2 to Part 3 of Division 2 of the Insurance Code, to read:

3  
4 CHAPTER 5. MARKET ASSISTANCE PROGRAM FOR LONG-TERM  
5 HEALTH CARE FACILITY LIABILITY INSURANCE  
6

7 11890. As used in this chapter:

8 (a) “Long-term health care facility” has the same meaning as  
9 that term is defined in Section 1418 of the Health and Safety Code.

10 (b) “Residential care facilities for the elderly” has the same  
11 meaning as that term is defined in Section 1569.2 of the Health and  
12 Safety Code.

13 11891. If the commissioner finds after a public hearing that  
14 liability insurance for long-term health care facilities, residential  
15 care facilities for the elderly, or physicians who provide or oversee  
16 the provision of services to residents in long-term health care  
17 facilities or residential care facilities for the elderly; is not readily  
18 available in the voluntary insurance market, and that the public  
19 interest requires this availability, the commissioner may authorize  
20 the formation of a market assistance program to assist in securing  
21 that insurance for long-term health care facilities, residential care  
22 facilities for the elderly, or physicians who provide or oversee the  
23 provision of services to residents in long-term health care facilities  
24 or residential care facilities for the elderly. The commissioner may  
25 require insurers, agents, and brokers to attend public hearings and  
26 meetings concerning either the need for a market assistance  
27 program or the organization and formation of a program. The  
28 commissioner may also assist in securing insurance for long-term  
29 health care facilities, residential care facilities for the elderly, or  
30 physicians who provide or oversee the provision of services to  
31 residents in long-term health care facilities or residential care  
32 facilities for the elderly for which commercial liability insurance  
33 is not readily available by forming a risk pooling arrangement as  
34 permitted by the Federal Liability Risk Retention Act of 1986.

35 11892. (a) The commissioner may order the creation of an  
36 unincorporated, not-for-profit, temporary joint underwriting  
37 association for liability insurance, constituting a legal entity  
38 separate and distinct from all its members. The purpose of the  
39 association shall be to provide a market for liability insurance on

1 a self-supporting basis, without subsidy from association  
2 members.

3 (b) If the commissioner determines after a public hearing that  
4 liability insurance for long-term health care facilities, residential  
5 care facilities for the elderly, or physicians who provide or oversee  
6 the provision of services to residents in long-term health care  
7 facilities or residential care facilities for the elderly is readily  
8 available through the voluntary market, the association created  
9 pursuant to subdivision (a) shall cease its underwriting operations.

